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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Review of Entries to the Energy Resource Recovery Account (ERRA) And Compliance Review of Electric Contract Administration, Economic Dispatch of Electric Resources, and Utility Retained Generation Fuel Procurement Activities for the Record Period of January 1 through December 31, 2005.

Application 06-02-016

THE DIVISION OF RATEPAYER ADVOCATES' OPPOSITION TO PACIFIC GAS AND ELECTRIC COMPANY'S MOTION TO STRIKE

I. INTRODUCTION

Pursuant to Rule 45(f) of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) files this opposition to Pacific Gas and Electric Company's (PG&E) Motion to Strike portions of DRA's Witness Testimony, filed on June 29, 2006.[1]

Upon review and consideration of PG&E's Motion to Strike, DRA agrees to withdraw certain testimony. In particular, DRA will strike from its Amended Prepared Testimony: the sentences beginning on line 13 through line 16 of page 2-1; and the sentences beginning on line 9 through line 12 of page 2-13. Apart from these changes, DRA opposes PG&E's Motion to Strike.

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[1] Specifically, PG&E moves to strike: Part A of Chapter 1, beginning line 21 of page 1-1 through line 2 of page 1-2; the portion of Part A of Chapter 2 beginning on line 12 of page 2-1 through line 15 of page 2-1; Part B.2. "Outages" of Chapter 2, beginning on line 18 on page 2-5 through line 12 on page 2-13; and the portion of Part C "Conclusion" with the sentence beginning on line 5 of page 2-16 through line 8 on page 2-16.

PG&E's argument that certain testimony falls outside the scope of the Energy Resource Recovery Account (ERRA) proceeding is without merit. Similar testimony has been considered as relevant to the ERRA compliance review by the Commission in previous decisions. Nonetheless, PG&E attempts to improperly strike testimony material to the Commission's deliberation of the instant proceeding, including:

- DRA's testimony regarding Commission policy linking utility retained generation with reliability, which falls under the umbrella of the ERRA Proceedings.
- DRA's proposal to establish a benchmarking process used to track outages that may limit the [full set of] resources a utility has at its disposal to implement least-cost dispatch decisions.[2] DRA review of these outages falls within the scope of ERRA review.

The Commission must consider all information that is material to its decisions. Public Utilities Code section 1705 requires that the Commission's decisions contain findings and conclusions "on all issues material to the order or decision." The Commission must also "weigh the opposing evidence and arguments in order to 'determine whether the rights and interests of the general public will be advanced by the prosecution of the enterprise.'" (*No. Cal. Power Agency v. Public Utilities Com.* (1971) 5 Cal.3d 370, 379, quoting *Oro Electric Corp v. R.R. Com.* (1915) 169 Cal. 466, 475.) The information in DRA's testimony is relevant to the issues in this proceeding and will help inform the Commission's decision in this proceeding.

II. COMMISSION REVIEW OF FORCED OUTAGES RELATING TO UTILITY RETAINED GENERATION IS WITHIN THE SCOPE OF THIS PROCEEDING

The scope of this proceeding includes determinations of "whether Pacific Gas and Electric Company's (PG&E) power procurement activities for the recorded period January 1 through December 31, 2005, complied with its adopted procurement plan; and whether its Energy Resource Recovery Account entries for that period are *reasonable*." (Peevey Scoping Memo and Ruling, p. 1.) (Emphasis added.)

[2] Articulated as per a utility's AB57 responsibility, encoded in Public Utilities Code 454.5

Part of this review includes tracking costs of utility retained generation (URG), based on the Commission's policy to "facilitate energy cost comparison among utilities and assist [the Commission] to track variable energy related costs, and establish energy revenue requirement and associated rates in the near future." (D.02-10-062, p. 63.) DRA does not dispute the review of operations and management (O&M) practices and capital costs for power produced from URG in the balancing account are outside the scope of this proceeding. (D.05-02-014, p. 4.) While forced outages indeed affect review of URG O&M practices or capital costs, they may also directly affect fuel costs.[3] The Commission ultimately adopted this principle in D.05-11-007, where it considered DRA's assessment of PG&E's underlying URG operations, including planned and unplanned forced outages of its energy producing facilities to evaluate the reasonableness of PG&E's actual power purchases. (D.05-11-007, p. 2).

Based on the assessment of PG&E's 2004 forced outage rates, the Commission established the causal link between forced outages and fuel costs, and did not find such a relation to be outside the scope of ERRA analysis. Instead, the Commission concluded that the facts of that case did not merit a disallowance. Thus, while the Commission found PG&E's 2004 URG fuel costs reasonable and recoverable, the decision implies that a disallowance may have been warranted with different facts. (D. 05-11-007, p. 4.)

III. THE CHALLENGED TESTIMONY DOES NOT ADDRESS OPERATIONS AND MANAGEMENT, BUT EVALUATES FORCED OUTAGES WHICH DIRECTLY IMPACTS FUEL COSTS

In its Motion to Strike, PG&E alleges DRA's testimony at issue is "northing more than a review of PG&E's URG operations and maintenance, and is therefore outside the scope of this ERRA proceeding." (PG&E's Motion to Strike, p. 3.) Moreover, PG&E asserts DRA's recommendation for disallowance based on its assessment of forced outages is not supported by any analysis. PG&E further argues DRA does not attempt to tie its

[3] DRA attaches and also incorporates by reference its discussion of URG costs in DRA's Opening Brief of A.05-02-014.

disallowance recommendation to PG&E's URG fuel costs, nor account for negative impact on PG&E's URG fuel costs. These arguments have no merit.

A. The Testimony at Issue Shows the Relationship Utility Retained Generation and Reliability, Which Impacts Fuel Costs

DRA makes no assessment of PG&E's operations and management practices regarding PG&E's utility retained generation in its testimony. Rather, the testimony at issue addresses URG forced outages. Specifically, DRA proposes a filtering process to calculate and/or assess whether certain forced outages merit a disallowance. To establish a benchmarking method, DRA proposes to examine the reliability of resources, relative to the Commission's *Interim Opinion Regarding Electricity Reliability Issues* [D.04-07-028] and least cost dispatch.

Regarding ERRA, D.02-10-062 addressed the applicable standards of conduct for utility compliance, known as Standard of Conduct #4 (SOC 4):

> The utilities shall prudently administer all contracts and generation resources and dispatch the energy in a least-cost manner. Our definitions of prudent contract administration and least cost dispatch are the same as our existing standard.

(D.02-10-062, Conclusion of Law 11.) A subsequent decision elaborated upon this standard, asserting "the utilities have the responsibility to dispose of economic long power and to purchase economic short power in a manner that minimizes ratepayer costs." (D. 02-12-074, p. 77.)

Reasonable cost is impacted by generator reliability. The *Interim Opinion Regarding Electricity Reliability Issues* supports this principle: "[U]tilities should not only take into account their own direct costs, but also the total costs of their procurement and scheduling, including (to the extent discernable) the costs associated with both system and local area reliability within their service territories." (D.04-07-028, p. 4.) The Commission explains,

> In making plans to procure a mixture of resources, the utilities should take into account the Commission's longstanding procurement policy priorities – reliability, least cost, and

> environmental sensitivity. While each of these priorities is important individually, ***they are also strongly interrelated***.

(*Id,* at p. 9; quoting from D.02-10-062, *mimeo.,* pp. 17-18, emphasis added.) Further, the Commission states,

> We direct the utilities to include a local reliability component in their next procurement plan. This approach will facilitate a more comprehensive approach to resource planning. It is our intent that this approach will increase the effectiveness of resource procurement and result in lower costs to ratepayers.

(*Id*; quoting from D.04-01-050, mimeo., p. 129.) Here, the Commission suggests URG and least cost dispatch (while exclusively reviewed within the realm of the ERRA process) must also be considered *within the context* of the reliability standards set forth in D.04-07-028. Significantly, the Commission adds, "Accordingly, a utility scheduling practice or procurement plan that focuses solely on least cost energy, *without regard to … reliability*, is not in compliance with our prior decisions, approved short-term procurement plans, and Assembly Bill (AB) 57." (D.04-07-028, p. 10, emphasis added.) Without considering the reliability of resources in the ERRA review of URG forced outages, the Commission risks an overly narrow view of the utility practice regarding URG as a whole.

Moreover, forced outages, in the context of reliability, have a direct impact on fuel costs. In the Motion to Strike, PG&E notes hydroelectric units use water flowing from the mountains and have no fuel cost. (PG&E Motion to Strike, fn.1, p. 3.) However, DRA's concern is replacing energy during a forced outage—PG&E must purchase the power on the market or engage one of its own resources, either of which would increase ratepayer costs. The Commission's analysis of the planned and unplanned forced outages in D.05-02-014 reaffirms DRA's opinion that, if such outages were preventable, PG&E may have been able to procure cheaper energy from the URG facilities that suffered the preventable outages. In the instant case, DRA's testimony analyzes the pattern of forced outages in relation to PG&E's reliability protocols, to make an assessment of whether the occurrences merit disallowance.

DRA looks analyze and benchmark URG forced outages. As explained in the testimony, DRA has developed a three-step process to review the link between forced outages and potential deficiencies in maintaining reliability standards. On this point, PG&E mischaracterizes DRA's use of the Commission's resource adequacy standards. DRA does not disagree with PG&E that the current Resource Adequacy proceedings contemplate future proceedings to specifically address the load serving entities' compliance with resource adequacy. (PG&E's Motion to Strike, p. 6.) However, DRA does not attempt to make judgments regarding the current Resource Adequacy proceedings, nor try to use the reliability planning standards as an exclusive or definitive method of calculation. Rather, DRA seeks to establish a benchmark exercise using the current resource adequacy counting protocols *in addition to* the Western Electricity Coordinating Council (WECC) and North American Electric Reliability Council (NERC) standards on reliability to examine the reasonableness of forced outages.[4] The process DRA adopts in its proposed testimony serves as an **initial filter** for disallowance, rather than an ultimate finding of fact. DRA suggests the filter poses a signal for further, more meticulous review, allowing PG&E an opportunity for rebuttal to explain the specific outages DRA notes using this filter. Therefore, PG&E's argument that DRA attempts to use resource adequacy as a forward-looking, capacity acquisition requirement lacks merit. Rather, the inherent relationship between reliability standards[5] and URG costs are explored to develop a benchmark to track outages that may limit the [full set of] resources a utility has at its disposal to implement least-cost dispatch decisions.[6] DRA review of these outages, which may trigger closer scrutiny, falls within the ERRA scope of review.

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[4] DRA takes the RA reserve margin of 15-17% and the WECC/NERC operating reserve of 5-7% to establish DRA's proposed 10% threshold benchmark as a *reasonable starting point* for evaluating forced outages. (DRA Testimony, p. 2-7.)

[5] Reliability standards per the July 8, 2004 *Interim Opinion Regarding Electric Reliability Issues* and the standards of WECC/NERC.

[6] Articulated as per utility's AB57 responsibility, encoded in Public Utilities Code 454.5

B. PG&E Bears the Burden to Prove Outage Rates Were Within The Industry Norms, But References No "Industry Norms," And PG&E's Motion Prevents DRA From Establishing Such Standards

PG&E argues DRA provides no comparison to previous years' outage hours with other utilities. (PG&E Motion to Strike, pp. 2-3.) PG&E further argues DRA makes no attempt to evaluate whether PG&E's forced outage experience is within, equal to, or above conventional counting practices used to consider resource adequacy. (PG&E's Motion to Strike, p. 5) These arguments also lack merit because PG&E ignores the fact that it has failed to meets its burden of showing compliance with industry norms, then seeks to prevent DRA from showing industry norms.

As there is no visibility to PG&E's modeling process, DRA is not certain that comparison with PG&E's 2004 performance is valid. This underscores a need for a benchmarking study, to ensure analysis on "apples to apples" basis. As for DRA's evaluation process, DRA selected a counting protocol for energy-limited resources. Provisions for hydro resources are included under this category. The protocol to determine how much of a resource "counts" towards Resource Adequacy is net of average forced outage factors, by resource class. Thus, DRA seeks to establish a clear standard.

PG&E's burden of establishing the "industry norm" regarding URG outage rates is decidedly lacking in its testimony. DRA's testimony intends to establish a benchmark in an attempt to define "industry norm," and believes the three-step process is a good starting point to filter those generating units that merit closer scrutiny. As such, PG&E's Motion to Strike is unfounded and effectively prevents DRA from establishing an alternative point of reference.

IV. CONCLUSION

WHEREFORE, DRA respectfully requests the Commission to deny PG&E's Motion to Strike for the reasons summarized below:

1. The Scoping Memo issued in this proceeding includes a review of URG costs, and DRA's review of URG costs, at times, necessitates a review of URG operations;

2. Public Utilities Code Section 1705 requires that the Commission's decisions contain findings and conclusions "on all issues material to the order or decision", which necessarily requires consideration of all information relevant to those issues;
3. Decision 05-11-007 did not restrict the evaluation of URG forced outages from scope of the ERRA proceeding;
4. DRA's testimony on PG&E's utility retained generation forced outages is necessary and relevant for a review of PG&E's fuel costs;
5. Forced outages, in the context of reliability, has a direct and potentially negative impact on fuel costs;
6. DRA's testimony is necessary and relevant to establish a benchmark based on current resource adequacy standards *in addition to* the WECC/NERC standards on reliability to examine ways of reducing forced outages, which by themselves, are not considered exclusively; and
7. DRA's testimony is necessary and relevant to develop a benchmark to track outages that may limit the [full set of] resources a utility has at its disposal to implement least-cost dispatch decisions.[7] DRA review of these outages, which may trigger closer scrutiny, falls within the ERRA scope of review.

Respectfully submitted,

/s/ LISA-MARIE SALVACION

LISA-MARIE SALVACION
Staff Counsel

Attorney for the Division of
Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-2069
Fax: (415) 703-2262

July 14, 2006

[7] Articulated as per utility's AB57 responsibility, encoded in Public Utilities Code 454.5

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **"THE DIVISION OF RATEPAYER ADVOCATES' OPPOSITION TO PACIFIC GAS AND ELECTRIC COMPANY'S MOTION TO STRIKE"** in **A.06-02-016** by using the following service:

[X] **E-Mail Service:** sending the entire document as an attachment to an e-mail message to all known parties of record to this proceeding who provided electronic mail addresses.

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Executed in San Francisco, California, on the 14th day of July 2006.

/s/ Nelly Sarmiento

Nelly Sarmiento

N O T I C E

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